IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3693 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAMDEV CHANDRASING BAGLE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3693 of 2004

MR SHAKEEL A QURESHI for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 13/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 19-12-2003. By

the said order, the petitioner is detained as a "bootlegger" under PASA. Along with the order of detention, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about three criminal cases pending against the petitioner. All these cases are registered under the Bombay Prohibition Act. After considering the aforesaid cases, the detaining authority has passed the order of detention against the petitioner, which is impugned in this petition.

2) Mr.Radhanpurwala for Mr.Qureshi, learned advocate for the petitioner submitted that except three criminal cases there is no other material, which is relied upon by the authority, while passing the impugned order of detention. It is submitted by him that no statement of any witness is recorded by the authority. He further submitted that aforesaid three cases registered against the petitioner can be said to be cases of breach of law and order and the same cannot be treated to be cases of breach of public order. It is also submitted by him that the last offence was registered against the petitioner on 28-09-2003, while the detention order was passed after considerable time on 19-12-2003 and, therefore, there is a delay of more than two months in passing the impugned order. He submitted that in view of this delay, the subjective satisfaction of the detaining authority can be said to have been vitiated. He further submitted that similar order of detention was passed against ten other persons, who have preferred petitions before this Court and this Court has released them on the aforesaid ground of delay in passing the detention order.

3) In the instant case, unfortunately, no affidavit in reply has been filed by the authority, explaining the delay in passing the detention order after the occurrence of the last so called incident. Therefore, the averment made in the petition in ground 3 (c) about delay in passing the impugned order, is not controverted by the authority. Under these circumstances, there is no alternative but to set aside the order of detention on the ground of delay in passing the detention order from the date of last incident.

4) Accordingly, this petition is allowed. The order of detention dated 19-12-2003 is quashed and set aside. The detenu, Namdev Chandrasing Bagle is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

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